

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TAMMY KITZMILLER; BRYAN AND
CHRISTY REHM; DEBORAH
FENIMORE AND JOEL LIEB; STEVEN
STOUGH; BETH EVELAND; CYNTHIA
SNEATH; JULIE SMITH; AND ARALENE
("BARRIE") D. AND FREDERICK B.
CALLAHAN,

Plaintiffs,

Civil Action No. 04-CV-2688

v.

Honorable John E. Jones III

DOVER AREA SCHOOL DISTRICT;
DOVER AREA SCHOOL DISTRICT
BOARD OF DIRECTORS,

Defendants.

**PLAINTIFFS' OBJECTIONS TO DEFENDANTS'
COUNTER DESIGNATIONS OF DEPOSITION TESTIMONY**

Plaintiffs object to Defendants' counter designations of deposition testimony because they are outside the scope of what is permitted by Rule 32 of the Federal Rules of Civil Procedure.¹ Specifically, counter designations are limited to deposition testimony which explains or puts the initially designated deposition testimony in the proper context. *See Fed. R. Civ. P. 32(a)(4); see also Magual v.*

¹ The parties have agreed and communicated to the Court that these objections do not need to be resolved prior to trial or during the first week of trial.

Prudential Lines, Inc., 53 F.R.D. 301, 303 (E.D. Pa. 1971) (stating that 32(a)(4) “is clearly designed to allow explanatory material into the record”); and 8A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2148 (stating “the opposing party is entitled under the rule to have the context of any statement, or any qualifications made as part of the deponent’s testimony also put into evidence”).

Defendants have improperly counter-designated deposition testimony of available witnesses which does not explain or add context to Plaintiffs’ initial designations. Given that Plaintiffs’ designations are admissions by a party-opponent, they are appropriately countered when the witness testifies at trial, rather than in a counter designation of prior deposition testimony.

Because Defendants’ counter designations do not explain or provide context to Plaintiffs’ designations, Plaintiffs object to the introduction of Defendants’ counter designations of deposition testimony listed below.

Michael Baksa (March 9, 2005) (Exh. A)²

39:7–41:8

² The tab for each witness, with two exceptions, has Plaintiffs’ designations indicated by highlighting of the designated testimony, and Defendants’ counter designations indicated by bracketing of counter-designated testimony. In the case of Buckingham (January 3, 2005) and Harkins (April 12, 2005), Plaintiffs’ designations are bracketed and Defendants’ counter designations are bracketed with the initials “PTG” next to them.

73:7-74:18
138:5-9, 19-25
149:7-150:16
174:17-21
184:21-185:24
194:4-197:18

Alan Bonsell (Jan. 3, 2005) (Exh. B)

79:17-24
81:5-7

Alan Bonsell (April 13, 2005) (Exh. B)

17:1-20
19:20-23:2
23:14-24:4

William Buckingham (January 3, 2005) (Exh. C)

106:21 – 107:15
108:1 – 110:10
130:3 – 25
133:16 – 134:11
135:16 – 136:21

Elmira Jane Cleaver (June 9, 2005) (Exh. D)

49:15-51:15
53: 1-8
54:10-25
67:12-15

Steve Fuller (June 21, 2005) (Exh. E)

50:22-51:11
56:11-57:23
90:13-92:4
146:6-146:20
147:8-147:19

157:3-157:14
170:10-171:2
171:24-173:15
186:16-188:9
216:15-217:7

Sheila Harkins (Jan. 3, 2005) (Exh. F)

26:1-27:14

Shelia Harkins (April 12, 2005) (Exh. F)

26:22 - 25
37:11 – 38:9
39:7 – 24
55:9 – 18

Scott Minnich (May 26, 2005) (Exh. G)

8:2-9:1
10:15–10:21
33:9-34:5
34:19-35:19
36:10-37:1
40:1-41:7
42:12-42:20
72:3-73:12
83:9-84:16
95:5-95:15

Richard Nilsen (Jan. 3, 2005) (Exh. H)

28:5-7
52:2-15
52:20-24
60:7-11
70:24-71:22

Richard Nilsen (April 15, 2005) (Exh. H)

12:6-13:8
13:15-24
15:10-19:2
50:15-53:15
63:2-64:3
95:3-96:15

Warren Nord (June 7, 2005) (Exh. I)

45:22-46:9
64:4-68:3
76:18-77:15
82:8-83:13
86:5-86:15
97:24-100:18
130:21-144:1

Respectfully submitted,

/s/ Eric Rothschild

Eric Rothschild (PA 71746)
Alfred H. Wilcox (PA 12661)
Stephen G. Harvey (PA 58233)
Pepper Hamilton LLP
3000 Two Logan Square
18th & Arch Streets
Philadelphia, PA 19103
(215) 981-4000
rothschilde@pepperlaw.com
wilcoxa@pepperlaw.com
harveys@pepperlaw.com

Thomas B. Schmidt, III (PA 19196)
Pepper Hamilton LLP
200 One Keystone Plaza
North Front and Market Streets
P.O. Box 1181

Harrisburg, PA 17108
(717) 255-1155
schmidtt@pepperlaw.com

ACLU of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213
412-681-7864
vwalczak@aclupgh.org

Paula K. Knudsen (PA 87607)
ACLU of Pennsylvania
105 N. Front St., Suite 225
Harrisburg, PA 17101
(717) 236-6827
pknudsen@aclupa.org

Ayesha Khan (adm. *phv*)
Richard B. Katskee (adm. *phv*)
Alex J. Luchenitser (adm. *phv*)
Americans United for Separation of
Church and State
518 C St., NE
Washington, DC 20002
(202) 466-3234
akhan@au.org
katskee@au.org
luchenitser@au.org

Attorneys for Plaintiffs

Date: September 21, 2005

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2005, a copy of the foregoing Plaintiffs' Objections to Defendants' Counter Designations of Deposition Testimony should be served on the following counsel through the electronic case filing system:

Richard Thompson, Esquire
Robert J. Muise, Esquire
Patrick T. Gillen, Esquire
Thomas More Law Center
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106

(Counsel for Defendants)

Ron Turo, Esquire
Toro Law Offices
28 South Pitt Street
Carlisle, PA 17013

(Local Counsel for Defendants)

/s/ Eric Rothschild
Eric Rothschild (71746)